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APR 19 2004

OFFICE OF PETITIONS

In re Application of
Max I. Gurth
Application No. 10/669,566
Filed: September 25, 2003
Attorney Docket No. 8647-PA04

ON PETITION

This is a decision on the petition filed February 9, 2004, in response to the Notice to File Missing Parts mailed December 22, 2003, which is treated as a petition under 37 CFR 1.182 to accord a filing date.

The petition is **DISMISSED**.

On September 25, 2003, the application was filed.

On December 22, 2003, the Office of Initial Patent Examination (OIPE) mailed a Notice to File Missing Parts which indicated, *inter alia*, that the application had been accorded a filing date of September 25, 2003, but that 1) the oath or declaration submitted with the application was unsigned and 2) that page 7 of the specification was unacceptable as it does not comply with 37 CFR 1.52(a) and that a substitute specification in compliance with 37 CFR 1.152, 1.121(b) (3) and 1.125 is required.

In response, on February 9, 2004, the present petition was filed. Petitioners claim that an executed oath or declaration was filed upon application with the other application papers. Petitioner submits a copy of an executed oath or declaration, a copy of a date stamped post card receipt acknowledging receipt of the oath or declaration on September 25, 2003 and a copy of the application transmittal cover sheet in support of their claim that the oath or declaration submitted with the other application papers was executed.

The arguments have been considered, but are not persuasive. The U.S. Patent and Trademark Office (Office) file is the official record of the papers originally filed in this application. A review of the papers originally filed reveals that an oath or declaration was in fact filed, that is not disputed. However, the oath or declaration filed is not executed. Petitioner's assertion that the oath or declaration filed September 25, 2003 was executed, is not more persuasive than the contents of the official USPTO file.

Petitioner's submission of the date stamped postcard receipt is appreciated but, a postcard receipt which itemizes and properly identifies the paper(s) which is being filed only serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. Furthermore, the application transmittal sheet evidences, at best, petitioner's intent to file an oath or declaration and does not prove that the oath or declaration filed was executed.

Accordingly, the "Notice to File Missing Parts" mailed December 22, 2003, was correct in stating that the oath or declaration filed was "unsigned" and therefore, the petition fee will not be refunded. Likewise, since the oath or declaration submitted on September 25, 2003 was not executed, a fee in the amount of \$65 is due for the late filing of the executed oath or declaration filed with this petition on February 9, 2004.

As to the second part of the "Notice" mailed December 22, 2003, petitioner has not submitted a substitute specification. Petitioner has also not even acknowledged that portion of the "Notice" which required a substitute specification.

All of the items described herein must be submitted within **TWO MONTHS** of the date of this decision, or proceedings on the application will be terminated.¹ **THIS TIME PERIOD MAY NOT BE EXTENDED PURSUANT TO 37 CFR 1.136.**

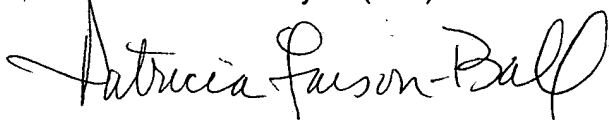
Failure to file a timely petition with the surcharge for the late filing of the executed oath or declaration and the substitute specification as required in the Notice to File Missing Parts mailed December 22, 2003 will result in the forwarding of the application to the Office of Initial Patent Examination with an indication that the application is abandoned.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
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By FAX: (703)872-9306
Attn: Office of Petitions

Telephone inquiries concerning this matter should be directed to the undersigned Petitions Attorney at (703) 305-4497.



Patricia Faison-Ball
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Office of Petitions

¹37 CFR 1.53(e).